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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH SECTION 252(e)
OF THE TELECOMMUNICATIONS
ACT OF 1996

Docket No. RT-00000F-02-0271

STAFF'S REPLY TO
COMMENTS OF WORLDCOM,
AT&T AND RUCO ON ITS
SUPPLEMENTAL REPORT

Staff issued a Supplemental Report and Recommendation on Qwest's Compliance with Section 252(e) of the Telecommunications Act of 1996 on August 14, 2002. The Supplemental Report and Recommendation addressed the additional discovery done by Staff since the last procedural conference, and Staff's recommendations for further proceedings in both this case and the Section 271 proceeding. Comments on the Staff's Supplemental Report and Recommendation were filed by WorldCom, Inc. ("WorldCom"), Qwest Corporation ("Qwest"), the Residential Utility Consumer Office ("RUCO"), AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T"). In this Reply, Staff will not be responding to all of the positions taken by the Parties on Staff's Supplemental Report. Staff is filing this limited Reply to clarify and/or correct certain representations that were made by the Parties regarding Staff's positions in its Supplemental Report.

First, WorldCom has apparently misunderstood the nature and purpose of Staff's proposal with regard to the Section 271 proceeding and the 271 sub-docket proposed by Staff in its Supplemental Report. From WorldCom's remarks on page 6 of its Comments, WorldCom apparently believes that Staff is proposing a limited process which would look only at the assessment of fines, and that there would be no assessment of whether the 271 record had been

1 tainted as a result of the agreements. This is simply not the case. Staff's 271 Supplemental
2 Report and Recommendation will address whether and to what extent the 271 record has been
3 tainted as a result of the agreements. In addition, a 271 workshop has already been held for
4 parties who believed that they had been precluded from raising any issues during the course of
5 the 271 proceeding due to any of the unfiled agreements. A separate report will also be issued
6 addressing the issues raised by the parties at the Workshop. Thus, for WorldCom to suggest that
7 Staff has in any way failed to address this "fundamental issue" flies in the face of the facts.

8 WorldCom further suggests in its Comments at page 6, that Staff intends that the sub-
9 docket to the 271 docket would not need to be completed before the Commission made its
10 recommendation on Qwest's application. This is also incorrect. The discussion in Staff's
11 Supplemental Report upon which WorldCom relies has to do with consolidation, not with the
12 relationship between the 271 sub-docket and the 271 proceeding itself. To be clear, it is Staff's
13 recommendation that the sub-docket to the 271 proceeding¹ conclude before the 271 process
14 itself concludes and before the Commission makes its recommendation on Qwest's application.

15 AT&T states that a major problem with Staff's first set of data requests is that the
16 questions are phrased in a manner which limits the scope of the inquiry. AT&T Comments at p.
17 2. AT&T goes on to state that a review of Staff's first set of data requests shows that the inquiry
18 is limited to whether the CLECs have any unfiled "interconnection agreements or amended
19 interconnection agreements with Qwest." *Id.* AT&T concludes that "Staff's data requests may
20 not have generated responses that included all written agreements that affect interconnection,
21 wholesale services or unbundled network elements." AT&T Comments at pps. 3-4. Staff
22 strongly disagrees with AT&T's characterization of the Staff's first set of data requests, and
23 believes that AT&T has misinterpreted them. Not only did Staff ask for unfiled interconnection
24 agreements or amendments to interconnection agreements; but Staff also asked for any
25 agreements not filed with the Commission between the CLEC and Qwest "that either modify or
26 augment" the terms and conditions set forth in the filed and approved interconnection
27 agreements between the carrier and Qwest. See Exhibit B to Staff's Supplemental Report and
28

¹ The sub-docket proposed by Staff is designed to address allegations that Qwest interfered with the 271 regulatory process.

1 Recommendation (Question 1:6). This question was specifically worded so that it would
2 encompass the types of billing settlement agreements and letter agreements at issue in this
3 proceeding. AT&T even concedes that in many cases the CLECs responding to Staff's data
4 requests answered "more broadly" by stating that there were no other agreements with Qwest
5 except the filed and approved interconnection agreement, or provided agreements the CLEC did
6 not consider to be interconnection agreements. AT&T Comments at p. 3 (footnote 2). This is
7 not by sheer coincidence as AT&T implies; it is because Staff's data request 1:6 was worded to
8 encompass these agreements.

9 AT&T also suggests that Staff should have addressed in more detail the oral agreements
10 between Qwest and McLeod and their purpose. AT&T Comments at p. 6. The purpose of
11 Staff's Supplemental Report and Recommendation was to discuss the responses to Staff's
12 additional discovery in this docket and for Staff to make recommendations on a process going
13 forward in both the 252(e) and 271 cases. Because there is going to be a hearing on Qwest's
14 compliance with Section 252(e) and why Qwest did not file certain agreements with the
15 Commission for approval, the types of issues raised by AT&T are more appropriately addressed
16 and developed in the context of that hearing.

17 AT&T next suggests on page 8 of its Comments, that Staff "has left agreements off
18 Exhibit G not because the agreements do not qualify as interconnection agreements under Staff's
19 interpretation but because Staff believes another carrier could not opt-in." This is simply not the
20 case. An example is the decommissioning agreements which appear on Exhibit G. Staff
21 believes that Qwest could make a strong argument that these types of "cost specific" agreements
22 are not available for opt-in by other carriers since each carrier has its own unique collocation
23 arrangements and therefore the costs are likely to vary by carrier. Despite this fact, since these
24 agreements affect "interconnection, wholesale service and unbundled network elements", Staff
25 included them on Exhibit G. Thus, AT&T's concerns in this regard are unfounded.

26 Staff also believes that AT&T's Comments are inconsistent in part. At page 9 of its
27 Comments, AT&T states that it believes the original purpose of the Section 252(e) proceedings
28 has largely been served. AT&T also suggests that the CLECs should not have to wait for a final

1 Commission order in the Section 252(e) proceeding in order to be able to opt-in to the
2 agreements. Id. AT&T also agrees with Staff that the issue of whether the Section 271
3 proceeding was adversely affected should be addressed in the Section 271 proceeding. AT&T
4 Comments at p. 12. Given these comments, it is then paradoxical for AT&T to suggest at p. 12 of
5 its comments that the records of both dockets still need to be consolidated. With the original
6 purpose of Section 252(e) being largely served, the list of agreements to be filed identified, and
7 with the 271 related issues being addressed in the 271 proceeding and related sub-docket, Staff
8 believes that nothing would be served by consolidating the records of both cases at this time.
9 Moreover, the Commission's April 18, 2002, Procedural Order in the 271 proceeding already
10 gives parties the right to make arguments based upon the 252(e) record in the public interest
11 phase of the 271 proceeding.²

12 At page 14 of its Comments, AT&T confuses the purpose of the additional discovery
13 done by Staff and the purpose of its 271 Supplemental Report and Recommendation with the
14 workshop undertaken by Staff in July to address the concerns of parties who believed that they
15 did not have the opportunity to participate in the 271 case due to unfiled agreements with Qwest.
16 In so doing, AT&T suggests that Staff has not addressed the impact of the agreements on the 271
17 record. The Supplemental 271 Report and Recommendation which Staff will be issuing focuses
18 on the issue of whether the 271 record was tainted. The Workshop, on the other hand, was held
19 to correct deficiencies in the record, to the extent any may exist. Thus, Staff will be addressing
20 both issues.

21 AT&T further notes in footnote 13 on p. 14 of its Comments, that it was not provided any
22 opportunity at the July workshop to raise issues unrelated to issues raised by Eschelon or
23 McLeod. While the workshop was intended primarily for those parties who believed they had
24 been precluded from participating in the 271 case at large because of an unfiled agreement with
25 Qwest, Staff allowed any other party to attend and participate in the workshop as well. Because
26 Staff did not want to give parties the impression that they could use the workshop to reargue old
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28 ² See, April 18, 2002 Procedural Order in Docket No. T-0000A-97-0238, p.3 ("Furthermore, any finding arising out of the Section 252(e) investigation docket can be cited and considered in our deliberation related to Section 271")

1 issues that had already been addressed, it was necessary to put some constraints on the
2 workshop. Other parties, including AT&T, were allowed to raise issues that they had as a result
3 of the additional evidence presented by Eschelon and McLeod. In addition, AT&T was allowed
4 to question Staff's Test Administrator on its responses to Staff's data requests which inquired as
5 to the impact of the unfiled agreements on the OSS test. AT&T and other parties were also
6 allowed to raise other issues at the end of the workshop, time permitting. Indeed, both
7 WorldCom and AT&T raised an issue relating to Qwest's CMP and SATE which was unrelated
8 to any new evidence presented by either Eschelon or McLeod. Staff was under the impression
9 that all issues had been presented at the end of the workshop, including AT&T's issues.

10 RUCO's comments included its own extensive Report of Investigation of the Unfiled
11 Agreements between Qwest and Eschelon and Qwest and McLeod. RUCO believes the matter
12 "should be kept under one docket until the Commission ascertains all the facts." RUCO
13 Comments at p. 3. RUCO states that this will permit the Commission to develop guidelines and
14 promulgate rules that will keep this from happening again. RUCO also states that putting "the
15 matter into separate dockets will miss the big picture and that the procedure should "not obscure
16 the facts". Id. RUCO apparently has misunderstood the nature of the process proposed by Staff
17 in its Supplemental Report and Recommendation. The 252(e) hearing proposed by Staff would
18 be comprehensive in nature and the type of evidence offered by RUCO in its Investigatory
19 Report is the type of evidence that should be submitted in the context of the 252(e) hearing. The
20 purpose of the hearing is to address why Qwest did not file certain agreements with the
21 Commission for approval. All of the evidence raised by RUCO goes directly to this issue. The
22 procedure proposed by Staff is specifically designed to address related issues together rather than
23 "throwing everything into the mix" resulting in a record that is a hodge-podge of unrelated issues

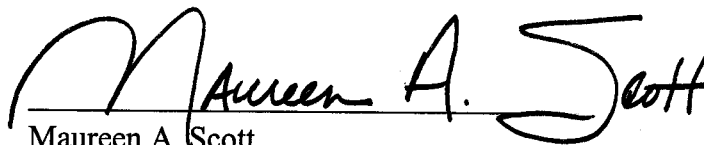
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1 which itself would "obscure the facts" and the records of both dockets unnecessarily and make
2 resolution of the issues much more complex and difficult.

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4 RESPECTFULLY submitted this 4th day of September, 2002.

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